Supreme Court, U.S.
FILED
AUG 3 1985
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-19

In the Supreme Court
OF THE
United States

OCTOBER TERM 1985

LAWRENCE FEIN,
Appellant,

VS.

PERMANENTE MEDICAL GROUP,
Appellee.

On Appeal from the Supreme Court of the State of California

MOTION TO DISMISS

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No. 85-19

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PERMANENTE MEDICAL GROUP,
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On Appeal from the Supreme Court of the State of California

MOTION TO DISMISS

MAY IT PLEASE THE COURT:

Appellee Permanente Medical Group moves that the appeal herein be dismissed on the ground that said appeal does not present a substantial federal question.

OPINION BELOW

This is an appeal from a decision of the California Supreme Court rejecting appellant's contention that California Civil Code § 3333.2 denies him the equal protection of the laws and due process of law in violation of the

Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

The jurisdictional requisites are adequately set forth in the appellant's jurisdictional statement.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Pertinent Constitutional and statutory provisions are set forth in the appellant's jurisdictional statement.

STATEMENT OF CASE

Appellant Fein, by this appeal, attacks the constitutionality of California Civil Code Section 3333.2 (West's Ann. Cal. Code 1983), which establishes a $250,000 maximum limitation for "non-economic losses" or damages. Such damages which are thereby limited are defined by statute to be "non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other non-pecuniary damage." (*Id.*, Section 3333.2(a).) This statute is one of many provisions of the California Medical Injury Compensation Reform Act of 1975 (hereinafter referred to as "MICRA"), which the California Legislature passed in response to a medical malpractice insurance crisis.

Appellant filed and prosecuted to verdict a claim for medical malpractice against appellee, Permanente Medical Group, the partnership of physicians allegedly responsible for failing to prevent a myocardial infarction (heart attack). A jury in Sacramento County Superior Court awarded appellant, *inter alia,* $500,000 in "non-economic" losses. Total damages awarded by the jury to appellant were $1,287,783. The trial judge reduced the "non-economic" damages, pursuant to California Civil Code section 3333.2(b), to $250,000. Appellant argued to the California Court of Appeal, Third Appellate District, and failing that petitioned the California Supreme Court for hearing. After his argument was rejected by that Court, he petitioned for a rehearing, again unsuccessfully.

Appellant now appeals to this Court, again because he will receive only $1,018,430 of the $1,287,783 awarded to him by the jury. Appellant Fein is an attorney, employed by the Legislative Counsel Bureau of the California Legislature. Ironically, he worked there as legislative counsel during the period when the California Legislature passed the very Act he now seeks to be declared unconstitutional.

ARGUMENT

I.

THE CALIFORNIA LEGISLATURE ENACTED THE MEDICAL INJURY COMPENSATION REFORM ACT WITH FULL RECOGNITION OF THE MEDICAL MALPRACTICE INSURANCE CRISIS.

The California Legislature enacted MICRA in 1975 in response to a medical malpractice crisis of unprecedented severity.

In enacting the emergency legislation, the Legislature made the following express finding:

> The Legislature finds and declares that there is a major health care crisis in the State of California attributable to skyrocketing malpractice premium costs and resulting in a potential breakdown of the health delivery system, severe hardships for the medically indigent, a denial of access for the economically marginal, and depletion of physicians such as to

substantially worsen the quality of health care available to citizens of this state. The Legislature, acting within the scope of its police powers, finds the statutory remedy herein provided is intended to provide an adequate and reasonable remedy within the limits of what the foregoing public health and safety considerations permit now and into the foreseeable future. (Stats., 1975, 2d Ex.Sess. 1975, ch. 2, § 12.5(1)(b).)

Clearly, the Legislature recognized that the development of several factors precipitated this medical malpractice crisis. Even to this day, physicians face substantial increases in the number of medical malpractice claims.[1] A dramatic increase in monetary awards in settlements or judgments against physicians substantially increases the gross amount of malpractice claims paid in California.[2] The subsequent significant losses suffered by the

[1]The medical malpractice crisis continues to plague the medical profession. *See generally* AMERICAN MEDICAL ASSOCIATION, PROFESSIONAL LIABILITY IN THE '80s, prepared by the American Medical Association's Special Task Force on Professional Liability and Insurance. In an article describing the report, the *California Lawyer* cites the following statistics from the report:

> Ten years ago, there were 14,074 claims against physicians and surgeons. About 40,000 claims were filed in 1983. *Crisis in Medical Malpractice,* CALIFORNIA LAWYER (March, 1985), p. 12.

[2]*Ibid.*

> . . . For 12 physician-owned insurance companies, the median indemnity paid in 1979 was $9,227. In 1983, 17 companies reported a median of $49,871, a 500 percent increase . . .
>
> In California superior courts, awards against physicians and hospitals totaled $31.8 million in 1983, twice the $15.4 million awarded in 1982. The average award in 1983 was $649,210 more than twice the 1982 figure of $257,222.

insurance industry cause many underwriters to leave the market.[3] The cost of medical malpractice insurance grows astronomically as a consequence.[4] The rise in the number of medical malpractice claims coupled with the increase in medical malpractice insurance rates increase medical and hospital costs to the consumer. The malpractice crisis also causes health care providers to practice defensive medicine,[5] thereby substantially increasing the overall cost of medical care and possibly decreasing its quality.

[3]*Ibid.*

> . . . Medical malpractice losses soared 145 percent from $817 million in the peak crisis year of 1975 to nearly $2 billion by the end of 1983 . . .

[4]*See generally* P. M. DANZON, WHY ARE MALPRACTICE PREMIUMS SO HIGH — OR SO LOW?, the Rand Corporation Publication Series (R-2623-HCFA)

[5]See generally, Alarm over Malpractice, TIME, January 28, 1985, p. 75.

> One result of the malpractice epidemic is that wary doctors are practicing "defensive medicine"— ordering additional health-care procedures in order to protect themselves against potential suits. According to an A.M.A. survey, 27% of doctors admitted that because of concern about possible legal action, they prescribed additional treatment, and 40% said they ordered extra diagnostic tests. Such practices, the A.M.A. estimates, add from $15 billion to $40 billion to the national health-care cost, which, like the increased price of health insurance, is passed on to the patient.

II

THE RATIONAL BASIS TEST IS THE PROPER STANDARD OF REVIEW FOR DETERMINING THAT CIVIL CODE SECTION 3333.2 DOES NOT DENY EQUAL PROTECTION TO PLAINTIFF.

Judicial scrutiny under the Equal Protection Clause of the federal Constitution is according to either of two standards for review.

A "rational basis" standard is applied to review economic and social welfare legislation, as here, where there is a "discrimination" or differentiation of treatment between classes of individuals. *See Plyler v. Doe,* 457 U.S. 202, 215, 72 L.Ed.2d 786, 799, 102 S.Ct. 2382, *reh den*, 458 U.S. 1131, 73 L.Ed.2d 1401, 103 S.Ct. 14 (1982). That standard presumes that legislation is constitutional and merely requires that distinctions drawn by challenged statute bear some rational relationship to a conceivably legitimate state purpose. *Ibid.*

Only in cases involving "suspect classifications" or touching upon "fundamental interests," is an attitude of active and critical analysis required. That is, only where the classifications are suspect is strict scrutiny of the statute required. *McDonald v. Bd. of Election Com. of Chicago,* 394 U.S. 802, 22 L.Ed.2d 739, 89 S.Ct. 1404 (1969). Classifications are suspect when:

> the class is ... saddled with such disabilities or subject to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. (*San Antonio School District v. Rodriguez,* 411 U.S. 1, 28, 36 L.Ed.2d 16, 93 S.Ct. 1278, *reh den*, 411 U.S. 959, 36 L.Ed.2d 418, 93 S.Ct. 1919 (1973).)

Race, alienage, and national origin are therefore suspect classifications.

A classification will also be given strict scrutiny if it involves a fundamental right. *Shapiro v. Thompson,* 394 U.S. 618, 22 L.Ed. 3d 600, 89 S.Ct. 1322 (1969). Fundamental rights include rights guaranteed by the First Amendment, the rights to marry, procreate, vote, travel and the right to a jury trial. Fundamental interests, for the purposes of equal protection review, are limited to rights which are explicitly or implicitly guaranteed by the Constitution. *San Antonio School District v. Rodriguez, supra*, 411 U.S. at pp. 33-34.

None of the legislative classifications in MICRA involve a suspect classification or a fundamental right. Indeed, appellant does not contend that California Civil Code Section 3333.2 should be strictly scrutinized. Appellant apparently recognizes that the legislative classifications do not involve race, alienage, national origin, sex, or poverty. Moreover, appellant apparently recognizes that the classification in section 3333.2 does not impair any fundamental right or liberty. After all, the right to sue in tort for unlimited monetary compensation of nonpecuniary losses is not a fundamental right, nor is it a right explicitly or implicitly guaranteed by the federal or state Constitutions. *Dandridge v. Williams,* 397 U.S. 471, 25 L.Ed.2d 491, 90 S.Ct. 1153, *reh den*, 398 U.S. 914, 26 L.Ed.2d 80, 90 S.Ct. 1684 (1970).

Since no suspect classification or fundamental right is involved, the constitutionality of Civil Code Section 3333.2 must be determined under the rational basis test.

III

AN INTERMEDIATE STANDARD OF REVIEW SOMEWHERE BETWEEN THE RATIONAL BASIS TEST AND THE STRICT SCRUTINY STANDARD SHOULD NOT BE APPLIED IN DETERMINING THE CONSTITUTIONALITY OF MICRA.

Appellant's contention that this Court should utilize an intermediate standard of review, sometimes referred to as the means-scrutiny test, in determining the constitutionality of MICRA is without merit.

In *Reed v. Reed*, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971), the United States Supreme Court utilized an intermediate standard of review requiring the Court to inquire whether a legislative classification "substantially furthers" the achievement of some "important governmental objectives" to strike down a sex based classification. *See Craig v. Boren,* 429 U.S. 190, 50 L.Ed.2d 397, 97 S.Ct. 451, *reh den*, 429 U.S. 1124, 51 L.Ed.2d 574, 97 S.Ct. 1161 (1976). In *Reed v. Reed*, the words "fair and substantial" as well as "reasonably necessary" were used in speaking of the intermediate standard. *Reed v. Reed*, involved sex discrimination, which has been viewed as being a "quasi-fundamental" right or "almost-suspect" classification. This intermediate standard has subsequently been applied in sex discrimination cases, *see*, e.g., *Orr v. Orr,* 440 U.S. 268, 59 L.Ed.2d 306, 99 S.Ct. 1102 (1979); *Parham v. Hughes*, 441 U.S. 347, 60 L.Ed.2d 269, 99 S.Ct. 1742 (1979); and *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 64 L.Ed.2d 107, 100 S.Ct. 1540 (1980) and cases regarding illegitimates. *Mathews v. Lucas,* 427 U.S. 495, 505, 49 L.Ed.2d 651, 96 S.Ct. 2755 (1976); *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164, 175, 31 L.Ed.2d 768, 92 S.Ct. 1400 (1972). The intermediate standard has not been applied by the federal

courts beyond the above quasi-suspect classifications. *See*, e.g., *Alma Soc. Inc. v. Mellon*, 601 F.2d 1225 (2d Cir. 1979). MICRA does not involve sex discrimination or illegitimacy. Therefore, an intermediate standard of scrutiny should not be applied.

Appellant cites *Carson v. Mauer,* 424 A.2d 825 (N.H. 1980) for the proposition that MICRA should be subjected to an intermediate standard of scrutiny. In *Carson v. Maurer,* the New Hampshire Supreme Court subjected a New Hampshire statute with provisions similar to MICRA to an intermediate standard of scrutiny and subsequently found that statute violated the equal protection clause of the New Hampshire constitution. It cannot be over-emphasized that the New Hampshire Supreme Court decided *Carson v. Maurer* on state, and not federal, constitutional grounds. In pertinent part, the per curiam opinion stated:

> We recognize that recently the United States Supreme Court has restricted its application of the substantial relationship to cases involving classifications based upon gender and illegitmacy. [Citation] *In interpreting our State Constitution, however, we are not confined to federal constitutional standards and are free to grant individuals more rights than [sic] the Federal Constitution requires. Id.* at p. 838. (Emphasis added)

Thus, *Carson* stands only for the proposition that a state supreme court may apply an intermediate standard of scrutiny according to its interpretation of the state constitution.

The California courts have not adopted the intermediate scrutiny test for any purpose. Although *Brown v. Merlo,* 8 Cal.3d 855, 106 Cal.Rptr. 388, 506 P.2d 212 (1973), utilized a standard approximating the *Reed v.*

Reed intermediate standard in finding certain portions of the California guest statute to be a violation of equal protection, *Schwalbe v. Jones,* 16 Cal.3d 514, 128 Cal.Rptr. 321, 546 P,2d 1033 (1976), erased any suggestion that California Supreme Court withdraw from the traditional two-tier equal protection test. In pertinent part, the *Schwalbe* Court stated:

> We are persuaded that to evaluate [the language of *Brown*] into doctrinal concept, and thus to dilute the traditional standard which we have here expressed, would result in the substitution of judicial policy determination for established constitutional principles. *Id.* at 518, fn. 2.

In *Cooper v. Bray,* 21 Cal.3d 841, 148 Cal.Rptr. 148, 582 P.2d 841 (1978), the California Supreme Court overruled *Schwalbe v. Jones* but did not revitalize the *Brown v. Merlo* standard of review earlier criticized in *Schwalbe v. Jones.* Instead, the *Cooper v. Bray* court viewed its task as being to conduct a "serious and genuine judicial inquiry" to determine "whether its disparate treatment . . . bears a rational relationship to a realistically conceivable purpose or goal of the legislation." *Cooper v. Bray,* 21 Cal.3d at p. 848, 148 Cal.Rptr. at p. 152. In effect, the traditional two-tier standard was reaffirmed. *See also, Newland v. Board of Governors,* 19 Cal.3d 705, 139 Cal.Rptr. 620, 566 P.2d 254 (1977), and *Farmers' Insurance Exchange v. Cocking,* 29 Cal.3d 383, 173 Cal.Rptr. 846, 628 P.2d 1 (1981).

Given the lack of any legitimate reason for discarding the well-tested, two-tier approach and given the refusal of the federal courts to expand the use of the *Reed v. Reed* approach, the means-scrutiny standard of review should not be adopted for evaluating the constitutionality of MICRA. Further, given the use of an intermediate standard of scrutiny only on the basis of a state supreme

court interpreting its state constitution and given the refusal of the California Supreme Court to adopt the intermediate standard of scrutiny, the subject matter can therefore be adequately decided on state constitutional grounds, and the appeal should be dismissed for lack of jurisdiction.

IV

CIVIL CODE SECTION 3333.2, WHICH PLACES A $250,000 NONPECUNIARY DAMAGE LIMITATION ON MEDICAL MALPRACTICE LITIGANTS, IS RATIONALLY RELATED TO A LEGITIMATE STATE INTEREST AND IS THEREFORE CONSTITUTIONAL.

California Civil Code section 3333.2 provides that in any action for injury against a health care provider based on professional negligence, the amount of damages for non-economic losses to compensate for pain, suffering, inconvenience, and the like should not exceed $250,000. The trial court appropriately applied section 3333.2 to adjust appellant's nonpecuniary damage award from $500,000 to $250,000. Civil Code section 3333.2 did not impair appellant's right to recover an unlimited amount of damages for economic losses sustained by him. Indeed, the major proportion of his recovery was for future economic losses. Section 3333.2 only limits nonpecuniary damages.

The Medical Injury Compensation Reform Act is not the first statute to place a limit on the amount of damages to be recovered. Nor is it the first statute to be challenged as a denial of the due process of law or the equal protection of the laws in violation of the Fifth or Fourteenth Amendment to the Constitution of the United States. In *Duke Power Company v. Carolina Environmen-*

tal Study Group, 438 U.S. 59, 57 L.Ed.2d 595, 98 S.Ct. 2620 (1978), the Court upheld a constitutional attack upon the Price-Anderson Act which imposed a five hundred sixty million dollar ($560 million) limitation on liability for nuclear accidents.

In *Duke Power v. Carolina Environmental Study Group,* the appellees sought a declaration that the Price-Anderson Act (42 USCS § 2210) was unconstitutional as a violation of the Due Process and Equal Protection clauses of the Fifth Amendment. Appellees argued that the Act was not rationally related to the potential losses, that the Act tended to encourage irresponsibility in matters of safety and environmental protection on the part of builders and owners of nuclear power plants, that the Act failed to provide those injured by a nuclear accident with a satisfactory *quid pro quo* for the common law rights of recovery which the Act abrogated, and that the Act placed the cost of nuclear power on an arbitrarily chosen segment of society (those injured by nuclear catastrophe).

As to equal protection, the Court noted:

> The general rationality of the Price-Anderson Act liability limitations — particularly with reference to the important congressional purpose of encouraging private participation in the exploitation of nuclear energy — is ample justification for the difference in treatment between those injured in nuclear accidents and those injuries derived from other causes.
>
> Speculation regarding other arrangements that might be used to spread the risk of liability is different from the Price-Anderson Act is, of course, not pertinent to equal protection analysis. *Id.* at 93-94, L. Ed. 2d at 624.

Thus, a statute will not violate the equal protection clause merely because it forces some victims to bear the burden of injury, as long as the statute is rationally related to some important legislative purpose.

Given the intangible nature of monetary compensation for physical and emotional distress, the California Legislature limited the recovery for those items. This limit attempted to check the dramatic increase in the size of medical malpractice judgments and to ensure a fair and reasonable recovery to the seriously injured. Recognizing and balancing the needs of the individual and the public good in general, the Legislature established that $250,000 limitation on nonpecuniary damages.

In establishing the limitation, the California Legislature recognized that damages awarded by juries for nonpecuniary losses vary widely depending on the persuasiveness of the attorneys, the location of the trial, the background of individual jurors, and other irrational and emotional factors. The California Legislature also considered the less widely known fact that pain and suffering awards are disproportionately higher in medical malpractice cases in comparison with other tort actions, suggesting the existence of a punitive element. STATE OF NEW YORK, REPORT OF THE SPECIAL ADVISORY PANEL ON MEDICAL MALPRACTICE (1976), p. 188, cited in S.E. Lewis, *Law and Medicine*, 2 ANNUAL SURVEY OF AMERICAN LAW 263 (1978) [hereinafter cited as "Annual Survey"]. Certainly it cannot be considered irrational for the Legislature to limit such punitive awards.

The Legislature concluded that, by potentially reducing awards for nonpecuniary damages in the medical malpractice actions, section 3333.2 would enable insurance carriers to lower their rates and prevent skyrocketing

health care costs and a potential breakdown of the health care delivery system. Section 3333.2 also works indirectly. It is believed that very large awards raise the average figure for medical malpractice settlements and thereby tend to set the "going rate," raising the costs of subsequent settlements. (Annual Survey, *supra,* pp. 262-263.) Section 3333.2 slows these escalating settlement costs.

Another rationale behind section 3333.2 is to enable malpractice carriers to predict more accurately their losses so they can set insurance premiums. The dramatic increase in the number of large monetary awards had made the task of rate setting extraordinarily difficult, particularly given the "long tail" involved in the payment of malpractice claims. Placing a ceiling on awards is helpful in predicting future losses with some degree of certainty.

The foregoing demonstrate that MICRA has a rational basis. MICRA, therefore, is constitutional with regard to equal protection of laws as guaranteed by the Fifth and the Fourteenth Amendments of the United States Constitution.

V

CALIFORNIA CIVIL CODE SECTION 3333.2 DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appellant also argues that MICRA denies due process of law in violation of the Fourteenth Amendment because it limits the potential recovery of medical malpractice claimants without providing them an adequate *quid pro quo.*

The California Supreme Court correctly rejected this challenge. It noted that this Court overruled the substantive due process analysis for economic-related statutes and instituted a rationality test for such legislation. In pertinent part, it stated:

> Since the demise of the substantive due process analysis of *Lochner v. New York* (1905) 198 U.S. 45, 49 L.Ed. 937, 25 S.Ct. 539, it has been clear that the constitutionality of measures affecting such economic rights under the due process clause does not depend on a judicial assessment of the justifications for the legislation or of the wisdom or fairness of the enactment [i.e., the adequacy of the *quid pro quo*]. So long as the measure is rationally related to a legitimate state interest, policy determinations as to the need for, and the desireability of, the enactment are for the legislature. *American Bank & Trust Co. v. Community Hospital,* 36 Cal.3d 359, 204 Cal. Rptr. 671, 683 P.2d 670 (1984). *See Fein v. Permanente Medical Group,* 38 Cal.3d 138, 158 (1985).

In *Duke Power, supra,* this Court rejected a similar argument that the Price-Anderson Act violated the due process clause of the Fifth Amendment on the ground

that it failed to provide those injured by a nuclear accident with a satisfactory *quid pro quo* for the common law rights of recovery which the Act abrogated. The Court dealt with this argument in a footnote:

> Our cases have clearly established that "[a] person has no property, no vested interest in any rule of the common law." *Second Employers' Liability Cases,* 223 U.S. 1, 50, 56 L. Ed. 327, 32 S. Ct. 169 (1912), quoting *Munn v. Illinois,* 94 U.S. 113, 134, 24 L. Ed. 77 (1877). The "Constitution does not forbid the creation of new rights or the abolition of old ones recognized by the common law, to attain a permissible legislative object," *Silver v. Silver,* 280 U.S. 117, 122, 74 L. Ed. 221, 50 S. Ct. 57, 65 A.L.R. 939 (1929), despite the fact that "otherwise settled expectation" may be upset thereby. *Usery v. Turner Elkhorn Mining Co.,* 428 U.S. 1, 16, 49 L. Ed.2d 752, 96 S. Ct. 2882 (1976). *See also Arizona Employer's Liability Cases,* 250 U.S. 400, 419-422, 63 L. Ed. 1058, 39 S. Ct. 553, 6 A.L.R. 1537 (1919). Indeed, statutes limiting liability are relatively commonplace and have consistently been enforced by the courts. See, e.g., *Silver v. Silver, supra* (automobile guest statute); *Providence & New York S.S. Co. v. Hill Mfg. Co.,* 109 U.S. 578, 27 L. Ed. 1038, 3 S. Ct. 379 (1883) (limitation of vessel owner's liability); *Indemnity Ins. Co. of North America v. Pan American Airways,* 58 F. Supp. 338 (SDNY 1944) (Warsaw Convention Limitation on recovery for injuries suffered during international air travel). Cf. *Thomason v. Sanchez,* 539 F.2d 955 (3d Cir. 1976) (Federal Driver's Act). *Duke Power v. Carolina Environmental Study Group, supra,* 438 U.S. at 88, 57 L. Ed. 2d at 620-621.

Thus, this Court has consistently held that a limitation on the amount of damages that may be recoverable is not a violation of due process.

The California Supreme Court relied on the above discussion by this Court of the limitation of the amount of damages recoverable in upholding the constitutionality of MICRA. In a footnote, the majority opinion stated:

> Indeed, even if due process principles required some "quid pro quo" to support the statute, it would be difficult to say that the preservation of a viable medical malpractice insurance industry in this state was not an adequate benefit for the detriment the legislation imposes on malpractice plaintiffs . . . .
>
> Although we do not suggest that the legislature felt that section 3333.2 alone — or for that matter any other single provision of MICRA — was essential to the survival of the medical malpractice insurance system, there is surely nothing in the due process clause which prevents a legislature from making a number of statutory changes, which in combination, provide the requisite benefit to justify the enactment. *Fein v. Permanente Medical Group,* 38 Cal. 3d at 160-161, fn. 18.

The California Supreme Court therefore relied on this Court's due process analysis to hold that MICRA is constitutional with respect to the due process challenge. The appeal must therefore be dismissed because it does not present a substantial federal due process question.

VI

CONCLUSION: THE MEDICAL INJURY COMPENSATION REFORM ACT IS CONSTITUTIONAL.

The Medical Injury Compensation Reform Act is constitutional. No suspect classification nor fundamental interest is involved here. The California Legislature made the reasonable factual determination that a health care crisis existed and that the subject statutes would help resolve the medical malpractice insurance problem. Given the compelling state interest in assuring the availability of reasonably priced health care to the citizens of this state, and given that the statutory provisions now before this Court further that goal while at the same time assuring medical malpractice claimants a fair and reasonable recovery, MICRA has a rational basis and therefore withstands appropriate constitutionality scrutiny.

Whatever questions may arise with respect to the effect of the Fourteenth Amendment on the limitation of noneconomic damages, the classification adopted by the California Legislature in enacting Civil Code section 3333.2 is well within the permissible limits long recognized by this Court. The contention that, as applied to appellant, it denies the equal protection of the laws in violation of the Fourteenth Amendment presents no substantial federal question.

Appellee's motion to dismiss should be granted.

Dated: August 1, 1985

Respectfully submitted,

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